



Submission to the Parliamentary Portfolio Committee on Corrections

*Sexual Abuse of Inmates in Department of Correctional Services (DCS) Facilities:
A Nationwide Human Rights Crisis*

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I. Introduction

Just Detention International (JDI) would like to express its gratitude to the Portfolio Committee on Corrections for convening a hearing on the prevalence of torture in Department of Correctional Services (DCS) facilities. JDI makes this stakeholder submission for the Committee members' consideration in connection with the March 7, 2012 session.

JDI is an international health and human rights organization that seeks to end sexual abuse in all forms of detention. JDI has worked in South Africa since 2005, when the organisation was contacted by corrections officials at Pollsmoor Prison in Cape Town. These courageous officials requested JDI's help in stemming rampant sexual violence at their prison. Since then, JDI has provided training to hundreds of corrections officials nationwide – ranging from brief workshops to five-day master trainings – as well as to officials and prison visitors of the Judicial Inspectorate of Correctional Services (JICS). Most recently, JDI has collaborated with the DCS at the national level, developing a comprehensive framework of policies to address sexual violence in DCS facilities. In April 2010, JDI, along with the Centre for the Study of Violence and Reconciliation (CSVR), made a presentation to this Committee on sexual abuse in DCS facilities and recommended best practices for addressing the problem.¹ JDI also provided input to this Committee on the 2011 Correctional Matters Amendment Act provision requiring that inmates be assessed to determine their vulnerability to sexual abuse in detention.² JDI, which recently opened an office in Johannesburg, works closely with other civil society stakeholders, including Sonke Gender Justice Network and the Civil Society Prison Reform Initiative (CSPRI), in its efforts to improve safety in DCS facilities.

II. Sexual Abuse in DCS Facilities

A. Overview

Sexual abuse in DCS facilities is a pervasive problem. In 2007, the JICS found that seven percent of inmates it surveyed reported that they had been subjected to unwanted sexual attention during their incarceration; nearly half of all inmates reported that sexual abuse in prison happens either “sometimes,” “often” or “very often.”³ Other studies indicate that sexual abuse plagues not only adult prisons, but DCS' juvenile facilities as well.⁴

Sexual violence in DCS facilities is linked to gang violence and its power structures. Anecdotal evidence suggests that prisoner rape fuels a cycle of victimization; once an inmate has been sexually assaulted, that inmate becomes a target for repeated abuse. Even inmates who are not raped are forced to adapt to an environment in which anyone not seen as hyper-masculine and

¹ For documents and information from the hearing, see <http://www.pmg.org.za/report/20100414-feedback-department-matters-related-their-accountability-management-n>.

² Correctional Matters Amendment Act, 2011, clause 6(c).

³ Judicial Inspectorate of Correctional Centres, *Annual Report 2007/2008* at 33 (April 2008), available at <http://judicialinsp.pwv.gov.za/Annualreports/Annual%20Report%202007-2008.pdf>.

⁴ Centre for the Study of Violence and Reconciliation (CSVR), *Situational Analysis of Boksburg Youth Centre, Sexual Violence in Prison Pilot Project: Survey Report 2006*, at 68-74 (2006), available at http://www.csvr.org.za/index.php?option=com_content&view=article&id=1333%3Asituational-analysis-of-boksburg-youth-centre-sexual-violence-in-prison-pilot-project-dec-2004--jan-2005-survey-report-&Itemid=2.

dominant is at risk for sexual abuse. In male facilities, those who wield power over other inmates are considered “men” or “husbands.” More vulnerable inmates, such as those who are young, first-time inmates, nonviolent, gay, transgender, or of small build, are referred to as “women” or “wyfies” and often treated as slaves, forced to provide sex and domestic services to their “husbands.”

The situation for vulnerable inmates is at its most dire during “lock-up,” a period of time each day during which inmates are locked in communal cells – sometimes with as many as 80 other inmates – with no access to guards for protection. Lock-up typically lasts from mid-afternoon until the next morning. During this time, inmates are placed at the mercy of predatory gang members and are at extremely high risk for abuse, with virtually no hope of receiving help from DCS staff until their cells are unlocked in the morning. Not surprisingly, sexual violence often occurs during this time.

B. The Prohibition Against Sexual Abuse in Detention and Other Forms of Torture Under International Law

When the state incarcerates someone, it takes on a legal responsibility to protect that person from harm, including sexual abuse. The sexual assault of prisoners, whether perpetrated by corrections officials or by other inmates, amounts to torture under international law, including the U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁵ and the International Covenant on Civil and Political Rights (ICCPR),⁶ both of which South Africa has ratified. In addition to its absolute prohibition against torture, the CAT specifies, among other things, that the government must train law enforcement personnel about the prohibition against torture and carry out a prompt and impartial investigation where there is reason to believe an act of torture has occurred.⁷

The DCS’ legal duty to protect detainees from sexual abuse is further articulated in the Constitution, which protects the right to freedom from all forms of violence from either public or private sources, as well as from torture and cruel, inhuman or degrading treatment or punishment.⁸ More specifically, the Constitution provides that detainees have the right to conditions of detention that are consistent with human dignity.⁹

C. The St. Albans Case

During the past decade, former President Mbeki’s Jali Commission, various NGOs, and U.N. treaty bodies have all expressed concern regarding the prevalence of torture in DCS facilities, including the sexual abuse of detainees.¹⁰ The U.N. Human Rights Committee’s November 2010

⁵ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention Against Torture), G.A. Res.39/46, 39 U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987).

⁶ International Covenant on Civil and Political Rights (ICCPR), adopted Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force March 23, 1976).

⁷ Convention Against Torture, *supra*, note 5 at Articles 10, 12.

⁸ Constitution of the Republic of South Africa, No. 108 of 1996, Section 12 (1) and (2).

⁹ *Id.* at Section 35 (2)(e).

¹⁰ See Judicial Commission of inquiry into alleged incidents of corruption, maladministration, violence

opinion regarding an incident at the St. Albans Correctional Centre in which inmate Bradley McCallum and the nearly 70 other inmates in his communal cell¹¹ were subjected to torture, highlights the systemic nature of sexual abuse by staff in DCS facilities, and the glaring lack of institutional accountability.¹²

In apparent retaliation for the killing of a warder at the facility, a group of 40 to 50 guards forced McCallum and the other inmates to strip and lie down on the wet floor of the corridor in a line with their faces in the inner part of the anus of the inmate lying in front of them. The warders, including 20 female guards, then reportedly walked over the inmates, kicking them in their genitals while making mocking remarks. One of the warders then anally raped Mr. McCallum using a baton. When McCallum tried to crawl away, the warder stepped on his back, forcing him to lie down on the floor and continue to endure the abuse. In addition to the sexual violence, warders sprayed the inmates with water and beat them with batons, shock boards, broomsticks, pool cues, and pickaxe handles throughout the incident; McCallum's jaw and front teeth were dislocated as a result of being beaten. Due to the shock and fear they were experiencing, inmates urinated and defecated on themselves and on those linked to them in the human chain.¹³ Although McCallum subsequently requested HIV testing due to fear of having contracted the virus from other inmates' bodily fluids, prison officials refused to allow it.¹⁴

Following this incident, McCallum was held incommunicado for a month. In addition, prison officials refused to accept the complaint McCallum lodged regarding the abuse he suffered.¹⁵ In his petition to the Human Rights Committee, he reported that he was continuing to experience intense trauma several years after the incident, including flashbacks of being raped.¹⁶ The Committee found that the warders' abuse of McCallum, including the allegations of sexual degradation and violence, and the prison's failures to provide him the requested HIV test and to conduct a proper investigation, constituted a violation of Article 7 of the ICCPR, which prohibits torture and cruel, inhuman or degrading treatment or punishment.¹⁷

III. The Status of DCS Efforts to Address the Sexual Abuse of Inmates in DCS Facilities

Despite the widespread nature of sexual abuse in DCS facilities, rape is not an inevitable part of prison life. On the contrary, sexual abuse in detention is preventable. The implementation of provisions required under international law to prevent torture would enable the DCS to prevent instances of sexual abuse and to ensure an appropriate response to instances of such abuse. For example, in addition to training staff about the prohibition against torture, the CAT requires state parties to take legislative, administrative, and other measures to prevent acts of torture, and to

or intimidation in the Department of Correctional Services ("Jali Commission"), Final Report (2006); additional stakeholder submissions to the Parliamentary Portfolio Committee on Corrections regarding torture in DCS facilities *available at* <http://www.pmg.org.za/report/20111130-stakeholder-hearings-prevalence-torture-correctional-centres>.

¹¹ St. Albans was at 300 percent capacity at the time of this incident.

¹² *McCallum v South Africa*, UN Doc CCPR/C/100/D/1818/2008 (2 November 2010), *available at* http://www.bayefsky.com/pdf/southafrica_iccpr_t5_1818_2008.pdf.

¹³ *Id.* at ¶¶ 2.1 - 2.4.

¹⁴ *Id.* at ¶ 2.5.

¹⁵ *Id.* at ¶ 2.8.

¹⁶ *Id.* at ¶ 2.4.

¹⁷ *Id.* at ¶¶ 6.4 - 7.

“keep under systematic review ... arrangements for custody and treatment” of detainees, with an eye toward preventing torture.¹⁸ It further requires officials to proceed to a prompt and impartial investigation of suspected violations of the CAT.¹⁹

In 2008, the DCS took bold steps toward developing measures that fulfill the CAT’s requirements when it began working with JDI and the CSVr in 2008 to develop, for the first time, a comprehensive policy framework to address the pervasive sexual abuse of inmates. The two-year effort to develop a strong framework represents a milestone in the long-standing collaboration between civil society and DCS officials. Indeed, DCS officials who committed to ending sexual abuse in their correctional centres were at the forefront of this process.

Sadly, more than a year after completion of the draft policy framework, it still has not been officially adopted by the DCS’ leadership. In failing to take this last key step, the DCS is failing its more than 160,000 inmates. It is also letting down the many DCS officials who courageously helped develop the framework, even when doing so meant challenging the code of silence that still governs many correctional centres. Fortunately, DCS leadership has assured JDI that it will schedule a meeting in the coming weeks to initiate a pilot project at two prisons and to move forward with the adoption of the policy framework.

The proposed policy framework aims to prevent and respond to sexual abuse of inmates, whether committed by other inmates or staff. It requires, among other things, the DCS to uphold a zero-tolerance standard for sexual abuse and to train all DCS employees about their absolute duty to protect inmates in their charge. The framework also requires that all inmates attend an orientation session on their right to be free from sexual violence. It further requires that inmates have a meaningful way of reporting abuse, including externally through confidential reports to the JICS, and that all reports of sexual abuse are taken seriously and investigated promptly. While the framework recommends the use of closed-circuit television (CCTV) and other appropriate technologies as a means of maintaining inmate safety, it recognizes that such tools must *supplement* the DCS’ sexual abuse prevention, detection, response, and monitoring efforts, and are not, in themselves, a solution to the problem of sexual abuse.

The policy framework is also a crucial tool in addressing the high rate of HIV/AIDS in DCS facilities, which the U.N. Committee Against Torture (CAT Committee) has highlighted as an area of concern.²⁰ The National Strategic Plan on HIV, STIs and TB, 2012-2016 (Plan), identifies inmates as a particularly vulnerable population to HIV transmission that must, therefore, be a focus of efforts to stem the pandemic.²¹ Sexual violence and HIV are inherently linked, especially in the detention context; estimates of HIV prevalence in DCS facilities top 40

¹⁸ Convention Against Torture, *supra*, note 5 at Article 11.

¹⁹ *Id.* at Article 12.

²⁰ Committee Against Torture, 37th Session, Consideration of Reports Submitted by States Parties under Article 19 of the Convention, CAT/C/ZAF/CO/1, at ¶ 22, available at [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9f410d04620f0197c125729800544666/\\$FILE/G0740324.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/9f410d04620f0197c125729800544666/$FILE/G0740324.pdf).

²¹ South African National AIDS Council, *National Strategic Plan on HIV, STIs and TB, 2012-2016*, at 48 (2011), available at <http://www.sanac.org.za/files/uploaded/NSPabf.pdf>.

percent, well above the national average.²² The Plan calls on the DCS to ensure the provision of appropriate prevention and treatment services, and to enforce laws and policies to prevent sexual violence in prison settings. With most inmates eventually being released and returning home, these recommendations are critical to the health and safety not only of prisoners, but of their families and communities as well.

Sexual abuse in detention is preventable. With committed leadership, strong policies, and sound practices the vast majority of sexual assaults behind bars can be prevented. The DCS must act now, building on the existing momentum to end the scourge that is prisoner rape. Recent reforms to DCS policy to help prevent sexual abuse and the spread of HIV among inmates would be greatly enhanced by the adoption of the policy framework. For example, the DCS has begun to disaggregate its assault statistics, now tracking rape and sexual assault cases separately from other forms of assault. Moreover, the requirement pursuant to the Correctional Matters Amendment Act to screen awaiting trial detainees for vulnerability to sexual abuse has the potential to be highly impactful, particularly given that un-sentenced detainees tend to be at a disproportionately high risk of abuse.

The DCS is on the cusp of realizing much-needed reforms that will prevent torture and make inmates and staff safer. No matter what crime someone might have committed, rape is not part of the penalty.

IV. Recommendations

In order to lower the incidence of sexual abuse and other forms of torture in its facilities, in compliance with its international human rights obligations, and to end the HIV/AIDS crisis in the nation's prisons, JDI make the following recommendation to the DCS:

Adopt the proposed policy framework to address the sexual abuse of inmates: In order to end sexual abuse in its facilities, the DCS needs to: establish a zero-tolerance standard on sexual abuse in its facilities; educate staff and inmates alike on the right of prisoners to be free from sexual abuse while detained; and ensure that instances of sexual abuse are investigated promptly and that victims receive appropriate care and services. The DCS must adopt without further delay the proposed policy framework on the sexual abuse of inmates that it developed in collaboration with JDI and CSVr.

Implement the National Strategic Plan on HIV, STIs and TB: In light of the prevalence of HIV/AIDS in DCS facilities, as highlighted by the CAT Committee and others, the DCS should implement promptly the applicable provisions of the National Strategic Plan. It should do so by improving its HIV prevention and treatment services for inmates and ensuring compliance with laws and policies aimed at preventing sexual violence.

Implement the Correctional Matters Amendment Act provisions: The DCS should, as a matter of urgency, implement the Act's requirement to assess awaiting trial detainees for their vulnerability to sexual violence and exploitation.

²² U.N. Office on Drugs and Crime, *et al.*, *HIV in Prisons in Sub-Saharan Africa: Opportunities for Action*, at 21 (2007), available at [http://www.unodc.org/documents/hiv-aids/Africa%20HIV Prison Paper Oct-23-07-en.pdf](http://www.unodc.org/documents/hiv-aids/Africa%20HIV%20Prison%20Paper%20Oct-23-07-en.pdf).